

meet during the session of the Senate on March 10, 2011, at 10 a.m., in 215 Dirksen Senate Office Building, to conduct a hearing entitled "Innovations in Child Welfare Waivers: Starting on the Pathway to Reform."

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON HEALTH, EDUCATION, LABOR,  
AND PENSIONS

Mr. SANDERS. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to meet, during the session of the Senate, to conduct a hearing entitled "Bridgepoint Education, Inc.: A Case study in For-Profit Education and Oversight" on March 10, 2011, at 10 a.m., in 430 Dirksen Senate Office Building.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS

Mr. SANDERS. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet during the session of the Senate on March 10, 2011, at 10 a.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS

Mr. SANDERS. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet during the session of the Senate on March 10, 2011, at 3 p.m. to conduct a hearing entitled "Information Sharing in the Era of WikiLeaks: Balancing Security and Collaboration."

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. SANDERS. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate, on March 10, 2011, at 10 a.m., in SD-226 of the Dirksen Senate Office Building, to conduct an executive business meeting.

The PRESIDING OFFICER. Without objection, it is so ordered.

SELECT COMMITTEE ON INTELLIGENCE

Mr. SANDERS. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on March 10, 2011, at 2:30 p.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider Calendar No. 41; that the nomination be confirmed, the motion to reconsider be considered made and laid upon the

table, there be no intervening action or debate, and that no further motion be in order to the nomination; that any related statements be printed in the RECORD, and the President be immediately notified of the Senate's action.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nomination considered and confirmed is as follows:

DEPARTMENT OF JUSTICE

Timothy J. Feighery, of New York, to be Chairman of the Foreign Claims Settlement Commission of the United States for a term expiring September 30, 2012.

LEGISLATIVE SESSION

Mr. REID. Mr. President, I ask unanimous consent the Senate resume legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR

Mr. REID. Mr. President, I ask unanimous consent on Monday, March 14, at 4:30 p.m., the Senate proceed to executive session to consider Calendar No. 10; that there be 1 hour of debate equally divided in the usual form; that upon the use or yielding back of the time, the Senate proceed to vote with no intervening action or debate on Calendar No. 10; the motion to reconsider be considered made and laid upon the table with no intervening action or debate; that no further motion be in order, and any related statements be printed in the RECORD; that the President be immediately notified of the Senate's action, and the Senate then resume legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDERS FOR MONDAY, MARCH 14,  
2011

Mr. REID. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 2 p.m., on Monday, March 14; that following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day; that following any leader remarks, there be a period of morning business until 4:30 p.m., with Senators permitted to speak for up to 10 minutes each; that following morning business, the Senate proceed to executive session, as provided under the previous order.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. REID. Mr. President, Senators should expect two rollcall votes beginning at 5:30 p.m. on Monday. The first vote will be on confirmation of Execu-

tive Calendar No. 10, the nomination of James Emanuel Boasberg, of the District of Columbia, to be U.S. District Judge for the District of Columbia, and the second vote will be on a motion to invoke cloture on the motion to proceed to Calendar No. 17, the Small Business Reauthorization Act.

ORDER FOR ADJOURNMENT

Mr. REID. If there is no further business to come before the Senate, I ask unanimous consent that it adjourn under the previous order, following the remarks of the assistant majority leader of the Senate, RICHARD DURBIN.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURBIN. Mr. President, are we still in morning business?

The PRESIDING OFFICER. Yes.

INTERCHANGE FEE REFORM

Mr. DURBIN. Mr. President, I rise to speak about the issue of interchange fee reform. Last year, Congress enacted landmark reform of the swipe fees that Visa and MasterCard impose on the debit card system. An amendment I offered to Wall Street reform passed the Senate with 64 votes—47 Democrats, 17 Republicans—and was later signed into law. It was the first amendment out of the first 26 on that bill that was held to a 60-vote standard. Every other amendment before was held to a simple majority. But I was lucky enough, when I offered the amendment, that there was an insistence that we had to reach 60 votes. We did it, 47 Democrats and 17 Republicans. It was a great victory, and one that came as a surprise to Wall Street, because Main Street—the retail merchants, the restaurants, the convenience stores, and many others—had worked hard for this amendment.

Never before had Visa and MasterCard, the duopoly of credit cards, and their big bank allies lost a vote such as this in Congress. Normally, the credit card companies and the big banks are used to getting their way in this town. Visa and MasterCard have such power that they control over 75 percent of all credit and debit card transactions in America. Last year, \$1.39 trillion was transacted on Visa and MasterCard debit cards. According to the American Bankers Association, the U.S. banking industry is a \$13 trillion industry. That is trillion with a "t."

Many Members in this body are being lobbied right now by banks and card companies to repeal this law, to undo the interchange reform Congress passed last year. It is one of the most active lobbying efforts I have ever seen.

I want to explain why interchange reform is so important, not just for the concepts of competition and transparency but also for the people and businesses affected, for small businesses and consumers and the American economy.

A little background on the debit card industry: Debit cards are simply a way for accountholders to access funds stored in an account. They are the electronic version of a check.

Debit cards are issued by banks, such as Bank of America, where the account is held. The cards are also part of a card network such as Visa or MasterCard, which set certain fees and rules about using their cards.

The banks that issue the debit cards can make money in several ways. They make loans based on deposits and earn interest. They charge fees to consumers for maintaining and accessing accounts such as ATM, monthly, overdraft, and transfer fees. They also receive interchange fees from merchants every time one of their debit cards is used.

If you look at any bank's Web site, you can find the loan interest rates and the account fees the bank charges customers. Banks compete with one another for this consumer business. That competition keeps their fees in check. It is called the free market. But ask any bank to show you on their Web site where you can find the interchange fees that the bank charges merchants, restaurants, universities, charities, convenience stores, ask them what they charge as an interchange fee for the use of their debit cards, the bank will say: Well, you will have to call Visa or MasterCard.

Card companies such as Visa fix the interchange fee rates received by issuing banks, the banks that have their name on the card next to the Visa symbol. In other words, thousands of banks that compete with one another in all other aspects of business do not compete with one another when it comes to how much in so-called swipe fees or interchange fees they get from merchants. The banks let Visa set the prices for all of them.

Visa has decided that every bank that issues Visa cards will get the same rate as every other bank, no matter how efficient a bank is, no matter how much fraud a bank allows. Rather than a competitive system, this is a system which subsidizes inefficiency. In fact, the only competition in the interchange system right now is the competition between card networks to raise interchange fees. They raise the rates in order to get banks to join the network and issue more of their cards.

It is easy to see why banks and card networks set up this system. It makes the banks happy because they get billions of dollars a year in high fees, and they don't have to worry about competition. It makes the networks happy because they get their own network fee each time a card is swiped, and high interchange means banks will issue more cards.

But it is unfair to those who are receiving the cards—for example, the restaurants, the merchants, the shops, the book stores, universities, charities, convenience stores—because they have no power to negotiate this fee. They

can't hold off and say: Wait a minute, if you want us to take Visa at our store, we want to know how much you are going to charge us every time a customer uses a Visa card. There is no way to have any conversation on that. Visa establishes what the swipe fee will be.

It is also unfair to consumers, particularly low-income consumers and those without banking accounts, who pay billions per year in hidden interchange fees that are passed on to them in higher prices for gas and groceries. How about that. I had some people in my office today talking about the price of gasoline. They said: Understand, every time a customer uses a Visa or a MasterCard, they are taking a percentage of that cost on the gallon of gasoline. Their percentage keeps going up, and in order to have a profit, to keep the lights on, we have to keep raising the price of gasoline to keep up with the credit card companies, let alone the national oil companies.

The Federal Reserve estimated that in 2009, about \$16.2 billion was charged in debit interchange fees, a massive amount of money that is being paid to the banks by merchants and their customers, about \$1.3 billion a month. I will get back to that number in a moment. It didn't used to be that way in America. It isn't that way in many other countries that use Visa and MasterCard.

Back when the debit card system was started several decades ago, debit fees were minimal. It wasn't until Visa entered the market in the 1990s that we started seeing debit card interchange fees that looked like credit card interchange fees.

They are two different worlds. When I use a credit card, ultimately, the bank and credit card company have to collect from me. If I dodge them or don't pay, there is a loss. A debit card comes directly out of my account. There is no question whether the money is there. It is already there.

There is an excellent New York Times article by Andrew Martin from last year titled "How Visa, Using Card Fees, Dominates a Market."

I ask unanimous consent to have that article printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the New York Times, Jan. 5, 2010]

THE CARD GAME—HOW VISA, USING CARD FEES, DOMINATES A MARKET

(By Andrew Martin)

Every day, millions of Americans stand at store checkout counters and make a seemingly random decision: after swiping their debit card, they choose whether to punch in a code, or to sign their name.

It is a pointless distinction to most consumers, since the price is the same either way. But behind the scenes, billions of dollars are at stake.

When you sign a debit card receipt at a large retailer, the store pays your bank an average of 75 cents for every \$100 spent, more than twice as much as when you punch in a four-digit code.

The difference is so large that Costco will not allow you to sign for your debit purchase in its checkout lines. Wal-Mart and Home Depot steer customers to use a PIN, the debit card norm outside the United States.

Despite all this, signature debit cards dominate debit use in this country, accounting for 61 percent of all such transactions, even though PIN debit cards are less expensive and less vulnerable to fraud.

How this came to be is largely a result of a successful if controversial strategy hatched decades ago by Visa, the dominant payment network for credit and debit cards. It is an approach that has benefited Visa and the nation's banks at the expense of merchants and, some argue, consumers.

Competition, of course, usually forces prices lower. But for payment networks like Visa and MasterCard, competition in the card business is more about winning over banks that actually issue the cards than consumers who use them. Visa and MasterCard set the fees that merchants must pay the cardholder's bank. And higher fees mean higher profits for banks, even if it means that merchants shift the cost to consumers.

Seizing on this odd twist, Visa enticed banks to embrace signature debit—the higher-priced method of handling debit cards—and turned over the fees to banks as an incentive to issue more Visa cards. At least initially, MasterCard and other rivals promoted PIN debit instead.

As debit cards became the preferred plastic in American wallets, Visa has turned its attention to PIN debit too and increased its market share even more. And it has succeeded—not by lowering the fees that merchants pay, but often by pushing them up, making its bank customers happier.

In an effort to catch up, MasterCard and other rivals eventually raised fees on debit cards too, sometimes higher than Visa, to try to woo bank customers back.

"What we witnessed was truly a perverse form of competition," said Ronald Congemi, the former chief executive of Star Systems, one of the regional PIN-based networks that has struggled to compete with Visa. "They competed on the basis of raising prices. What other industry do you know that gets away with that?"

Visa has managed to dominate the debit landscape despite more than a decade of litigation and antitrust investigations into high fees and anticompetitive behavior, including a settlement in 2003 in which Visa paid \$2 billion that some predicted would inject more competition into the debit industry.

Yet today, Visa has a commanding lead in signature debit in the United States, with a 73 percent share. Its share of the domestic PIN debit market is smaller but growing, at 42 percent, making Visa the biggest PIN network, according to The Nilson Report, an industry newsletter.

#### THE RISK OF REFUSING

Critics complain that Visa does not fight fair, and that it used its market power to force merchants to accept higher costs for debit cards. Merchants say they cannot refuse Visa cards because it would result in lower sales.

"A dollar is no longer a dollar in this country," said Mallory Duncan, senior vice president of the National Retail Federation, a trade association. "It's a Visa dollar. It's only worth 99 cents because they take a piece of every one."

Visa officials say its critics are griping about debit products that have transformed the nation's payment system, adding convenience for consumers and higher sales for merchants, while cutting the hassle and expense of dealing with cash and checks. In recent years, New York cabbies and McDonald's restaurants are among those reporting higher sales as a result of accepting plastic.

"At times we have a perspective problem," said William M. Sheedy, Visa's president for the Americas. "Debit has become so mainstream, some of the people who have benefited have lost sight of what their business model was, what their cost structure was."

Visa officials said the costs of debit for merchants had not gone down because the cards now provided greater value than they did five or 10 years ago. The costs must not be too onerous, they say, because merchant acceptance has doubled in the last decade.

The fees are "not a cost-based calculation, but a value-based calculation," said Elizabeth Buse, Visa's global head of product.

As for Visa's market share, company officials maintain that it is rather small when considered within the larger context of all payments, where, for now at least, cash remains king.

While Visa may be among the best-known brands in the world, how it operates is a mystery to many consumers.

Visa does not distribute credit or debit cards, nor does it provide credit so consumers can buy flat-screen televisions or a Starbucks latte. Those tasks are left to the banks, which owned Visa until it went public in 2008.

Instead, Visa provides an electronic network that acts like a tollbooth, processing the transaction between merchants and banks and collecting a fee that averages 5 or 6 cents every time. For the financial year ended in June, Visa handled 40 billion transactions. Banks that issue Visa cards also pay a separate licensing fee, based on payment volume. MasterCard, which is roughly half the size of Visa, uses a similar model.

"It's a penny here or there," said Moshe Katri, an analyst who tracks the payments industry for Cowen and Company. "But when you have a billion transactions or more, it adds up."

With debit transactions forecast to overtake cash purchases by 2012, the model has investors swooning: Visa's stock traded at \$88.14 on Monday, near a 52-week high, while shares of MasterCard, at \$256.84 each, have soared by more than 450 percent since the company went public in 2006.

While there is little controversy about the fees that Visa collects, some merchants are infuriated by a separate, larger fee, called interchange, that Visa makes them pay each time a debit or credit card is swiped. The fees, roughly 1 to 3 percent of each purchase, are forwarded to the cardholder's bank to cover costs and promote the issuance of more Visa cards.

The banks have used interchange fees as a growing profit center and to pay for cardholder perks like rewards programs. Interchange revenue has increased to \$45 billion today, from \$20 billion in 2002, driven in part by the surge in debit card use.

Some merchants say there should be no interchange fees on debit purchases, because the money comes directly out of a checking account and does not include the risks and losses associated with credit cards. Regardless, merchants say they inevitably pass on that cost to consumers; the National Retail Federation says the interchange fees cost households an average of \$427 in 2008.

While the cost per transaction may seem small, at Best Buy, the biggest stand-alone electronics chain, "these skyrocketing fees add up to hundreds of millions of dollars every year," said Dee O'Malley, director of financial services. "Every additional dollar we are forced to pay credit card companies is another dollar we can't use to hire employees, or pass along to our customers in the form of savings."

#### WEIGHING RULES ON MERCHANTS

The Justice Department is investigating if rules imposed by payment networks, includ-

ing Visa, on merchants regarding "various payment forms" are anticompetitive, a spokeswoman said. Several bills have been introduced in Congress seeking to give merchants more ability to negotiate interchange, which is largely unregulated.

While interchange remains legal despite repeated challenges, a group of merchants is pursuing yet another class-action suit, this time in federal court in Brooklyn, against Visa and MasterCard that seeks to upend the system for setting fees.

"Visa and MasterCard have morphed into a giant cookie jar for banks at the expense of consumers," said Mitch Goldstone, a plaintiff in the case.

Fees were not an issue when debit cards first gained traction in the 1980s. The small networks that operated automated teller machines, like STAR, Pulse, MAC and NYCE, issued debit cards that required a PIN. MasterCard had its own PIN debit network, called Maestro.

Merchants were not charged a fee for accepting PIN debit cards, and sometimes they even got a small payment because it saved banks the cost of processing a paper check.

That changed after Visa entered the debit market. In the 1990s, Visa promoted a debit card that let consumers access their checking account on the same network that processed its credit cards, which required a signature.

To persuade the banks to issue more of its debit cards, Visa charged merchants for these transactions and passed the money to the issuing banks. By 1999, Visa was setting fees of \$1.35 on a \$100 purchase, while Maestro and other regional PIN networks charged less than a dime, Federal Reserve data shows. Visa says the fee was justified because signature debit was so much more useful than PIN debit; at the time, roughly 15 percent of merchants had keypads for entering a PIN.

Merchants said they had no choice but to continue taking the debit cards, despite the higher fees; because Visa's rules required them to honor its debit cards if they chose to accept Visa's credit cards.

#### A SEVEN-YEAR BATTLE

Wal-Mart, Circuit City, Sears and a number of major merchants eventually sued. After seven years of litigation, Visa and MasterCard agreed to end the "honor all cards" rule between credit and debit and to pay the retailers a settlement of around \$3 billion, one of the largest in American corporate history. Visa paid \$2 billion, and MasterCard the remainder.

Since then, only a handful of retailers have stopped accepting Visa debit cards, an indication that the crux of the lawsuit was "much ado about nothing," Mr. Sheedy says.

And while some merchants said they thought the lawsuit would pave the way to a new era of competition, a curious thing happened instead: while Visa temporarily lowered its fees for signature debit, it raised the price on PIN debit transactions and passed the funds on to card-issuing banks, and its competitors soon followed.

The current class-action lawsuit joined by Mr. Goldstone contends that Visa's PIN debit network, called Interlink, is offering banks higher fees as an incentive to issue debit cards that are exclusively routed over this network. Interlink, which has raised its PIN debit fees for small merchants to 90 cents for each \$100 transaction, from 20 cents in 2002, is often the most expensive, especially for small merchants, Fed data shows.

One large retailer, who requested anonymity to preserve its relationship with Visa, provided data that showed Interlink's share of PIN purchases rose to 47 percent in 2009, from 20 percent in 2002, even as its fees stead-

ily increased ahead of most other networks—to 49 cents per \$100 transaction in 2009, from 38 cents in 2006.

Visa officials say its PIN debit network is taking off despite rising costs because it offers merchants, banks and consumers a level of efficiency and security that regional networks cannot match. "We are motivated as a company to try to drive value to each one of those participants so that they accept the card, issue more cards, use the card," Mr. Sheedy said.

At checkout counters, meanwhile, consumers are quietly tugged in one direction or the other.

Safeway, 7-Eleven and CVS drugstores automatically prompt consumers to do a less costly PIN debit transaction. The banks, however, still steer consumers toward the more expensive form of signature debit. Wells Fargo and Chase are among those that offer bonus points only on debit purchases completed with a signature.

Visa says it does not care how consumers use their debit card, as long as it is a Visa. But for now at least, the company says the only way to ensure that a purchase is routed over the Visa network is to sign.

"When you use your Visa card, you have a chance to win a trip to the Olympic Winter Games," a new Visa commercial promises.

The commercial does not explain the rules, but the fine print on Visa's Web site does: nearly all Visa purchases are eligible—as long as the cardholder does not enter a PIN.

Mr. DURBIN. I urge my colleagues to read it. It shows how Visa leveraged its dominance in the credit card industry to enter into and dominate the debit card industry. Visa then changed the debit interchange fee system so it looked like the credit card fee system. The result: the United States has the highest interchange fees in the world.

We also have some of the worst fraud prevention technology in the world. This is because Visa gives banks higher interchange rates for so-called signature debit transactions instead of PIN debit transactions. So the banks tell their customers to pay with signature debit, even though far less fraud occurs with the use of PIN numbers.

It doesn't have to be this way. Many countries such as Canada have thriving debit card systems with zero interchange fees. Canada has low fraud and wide consumer debit usage. Other places such as the European Union carefully regulate interchange rates to keep them to a reasonable level. But in this country, we have let dominant card networks—and they are a powerful bunch—take over our debit card system. They are driving that system on an unsustainable course.

I have worked for years to reform interchange fees and to bring transparency, competition, and choice to the credit card and debit card industry. I first introduced a bill on this in 2008. In 2009, I joined with Senator Kit Bond of Missouri to file a modest floor amendment to the Credit CARD Act. The amendment simply said interchange fees should be reported to the Federal Reserve and that Visa and MasterCard should not be allowed to stop merchants from offering discounts for debit cards against credit cards. The card companies and bank industry hated that idea like the devil hates

holy water. They did everything they could to kill the amendment. They used their standard talking points, saying this amendment would hurt consumers, small banks, credit unions, the economy, everything one could think of. The amendment never reached a vote. Instead, in 2009, the banks and card companies said they would support a study. We love to study things in Washington. So Congress delayed real reform and said: Let's get on with the study.

Last year, I said: Enough is enough. We can't continue to let Visa, MasterCard, and the big banks use price-setting schemes to turn our debit card system into their own large piggy bank at the expense of merchants and consumers. The amendment I offered last year said: If banks are going to let a card network set interchange rates for them, those rates must be reasonable and proportional to the cost of processing a debit transaction over that network's wires.

Why would we bring the Federal Reserve in to establish a reasonable and proportional interest change fee? Because there is no competition in this market. Visa and MasterCard, recently under investigation by the Department of Justice for their practices, establish what these interchange fees are going to be. They impose them on merchants who many times are told late in the game how much the fee is. They don't bargain. Merchants can't shop around. There is no competition when it comes to the establishment of interchange fees.

The amendment will end this inefficient subsidy that Visa and MasterCard have created for banks, and it will incentivize banks to operate their card systems efficiently. The amendment directs the Fed to issue regulations to implement this reasonable and proportional standard. The Fed issued draft regulations in December and is now working on final regulations to be completed in April and take effect in July.

Do my colleagues know what they found in their initial cut at this? The average interchange fee is in the range of 40 cents, and the average cost to use a debit card is about 10 cents. Think of the overcharge that is going on with every single transaction. The next time you are standing in the airport and somebody hands a debit card to the cashier to pay for a pack of gum, think about that retailer just having lost money. The only ones who made money in the transaction were Visa, MasterCard and the issuing bank.

Last year, when I was drafting this amendment, I knew we had to be careful about the way the reform would affect small banks and credit unions that currently benefit from the rates Visa and MasterCard set. I didn't want to drive small issuers out of the debit card market. So my amendment specifically exempted them from regulation. That means that now, just like before, networks will compete by raising interchange rates to win the busi-

ness of those small, unregulated issuers.

I know the small banks and credit unions are also lobbying on the Hill, saying that interchange reform will hurt them. For years, they have been making this argument against any type of reform. I have been on the Hill for a while, in the House and in the Senate.

I used to really believe there was a qualitative—not just quantitative but a qualitative—difference between community banks and credit unions and the big boys, the Wall Street banks. Over the years, I am sorry to say when it comes to these issues, they are the same. It is just a quantitative difference. Credit unions and community banks are smaller, but in terms of the way they look at issues, there is not a dime's worth of difference.

When it comes to this issue, there is an interesting phenomenon at work. Visa and MasterCard do not dare raise their head on Capitol Hill. If there are two more unpopular companies with American consumers, it is hard to think of what they might be. Maybe today it is oil companies. But it is a close second with credit card companies and the way they treat people. So they do not come in and lobby.

Well, how about the Wall Street banks? Do you think they are going to show up here and say: You cannot regulate these interchange fees? Two-thirds of the debit cards come from the biggest banks out of Wall Street, not the community banks and credit unions. So the big money in this whole transaction is on Wall Street. But you do not hear from the Wall Street banks. Why? Because they are not going to win any popularity contests either.

It was not that long ago we were shoveling billions of taxpayer dollars at these banks to keep the lights on after they made some pretty stupid investment decisions that drove our economy into the ditch. So they cannot lobby, the big banks, with the big money involved in this issue. The credit card companies cannot lobby because they have no popularity with the American consumer. So what do they do? They have some beards, and the beards in these circumstances are the credit unions and the community banks. Those specifically exempted are now coming to Congress, coming to Capitol Hill, saying this could hurt us in the future.

We drew a line and said if the asset value of the financial institution is below \$10 billion—\$10 billion—they are not affected by this law. There are, if I recall, only three credit unions in America with assets over \$10 billion. The vast majority, the overwhelming majority, of credit unions in this country do not have anywhere near that kind of asset value. The same thing is true with community banks.

So Wall Street banks and credit card companies have found their great agents. Their agents are the credit unions, community banks, presenting

their case to the Members of Congress as if they are directly regulated when they are specifically exempted from this.

I know the small banks and the credit unions are working the Hill. For years, they have been using these arguments against any type of reform. When we tried to get bankruptcy reform to deal with foreclosures a few years back—and I honestly think it could have had a dramatically positive impact to slow down foreclosures in this Nation—we specifically exempted credit unions and community banks, and they still lobbied against it. They are in concert when it comes to issues with the biggest banks in America. I do not understand it. It is a dramatic departure from where they have been historically.

Independent analysts agree that the reform Congress passed last year will give small banks actual competitive advantages over big banks. I ask unanimous consent to have printed in the RECORD a recent op-ed by Andrew Kahr in the American Banker newspaper entitled "Never Mind the Lobbyists, Durbin Amendment Helps Small Banks."

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From American Banker—BankThink, Mar. 3, 2011]

#### NEVER MIND THE LOBBYISTS, DURBIN AMENDMENT HELPS SMALL BANKS

The Durbin Amendment in Dodd-Frank lowers the interchange paid to large banks on debit card purchase transactions, and hence takes money away from these banks to give it to merchants, almost dollar for dollar. When passed, this provision was politically popular. It was a time for bank-bashing.

Now this component of Dodd-Frank is much less popular. Maybe legislators have noticed that even if Wal-Mart passed through every last penny of the 0.7% of debit card sales it's apt to save to customers in the form of lower prices, the consumer benefit is likely to be invisible to voters. In any event, the banks have made themselves highly audible to voters in shrill but absurd threats to cap debit card purchases at \$50 and the like. Another form of lobbying.

One of the arguments made against the Durbin restriction on interchange is that it will hurt community banks.

Poppycock.

Since Durbin explicitly excludes banks with assets under \$10 billion from the restriction on interchange, it takes a hyperactive imagination to see how these banks could be hurt by it. Lobbyists have the requisite inventiveness.

If large banks get 75% less interchange than they do now and small banks continue to get today's interchange rates, then obviously this confers a substantial competitive advantage on the small banks. They can impose lower fees, pay more interest, and give greater rewards to depositors. Anything that reduces revenue for big banks but not for small ones should help the latter compete more effectively against the former.

In opposition to common sense, bank lobbyists have put forward some very far-fetched arguments about how, in some upside-down world, small banks are still going to be losers rather than winners from Durbin.

One argument is that the clearing networks, of which there are only four that

matter, will not support the “two-tier” interchange system envisaged by Durbin. Ridiculous. Visa is the largest of the networks. It’s already announced that it will implement Durbin. (Maybe this is an object lesson as to why Visa remains No. 1.)

For the small banks, MasterCard is the only other significant player. If MasterCard finds it politic not to add one more wrinkle to a skein of interchange levels that is already of Byzantine complexity, then let the small banks gravitate to Visa in order to benefit from Durbin.

A second argument of the big-bank lobbyists is that merchants will reject the debit cards of small banks if these carry a 1% interchange cost, versus 0.3% for the large banks. Really? Then why don’t these merchants reject all credit cards, with interchange of 2% or more, if the customer could instead use a debit card? When is the last time a merchant politely asked you whether you could pay with a debit card instead of a credit card?

The reason merchants don’t do this, apart from association rules that purport to prohibit it, is that the retailer’s top priority is sales, not interchange. Selective “suppression” of cards by merchants has occurred with extreme rarity. One instance took place long ago when merchants in Boston revolted against higher interchange rates from American Express. This can’t happen now. Are cashiers in stores going to look at a list of small banks in order to discriminate against their cards—and then have customers walk out and leave their would-be purchases at the cash register? The fraction of customers who would be persuaded to change banks or carry two debit cards is infinitesimal.

The notion that merchants will give discounts on big-bank debit cards but not small-bank debit cards is equally silly. Since when did they offer an incentive to use debit rather than credit cards? If they are not motivated to do so by 2.3% versus 1% interchange, then why should they be motivated by 1% versus 0.3%?

Finally, we are warned that a second, utterly unrelated provision of Durbin that mandates competitive network routing will somehow injure small banks. Impossible. It is predominantly the biggest banks that have negotiated exclusive or volume-dependent routing deals with Visa or others. This too gives them an advantage over small banks that Durbin will undermine or erase—to the benefit of the small banks.

The charm of the Durbin debate on interchange is that it largely amounts to “Who’s going to get the money, big banks or merchants?” (In other words, “Which do you like less, Congressman, big banks, or big merchants?”)

Outside the realms of taxation and appropriations, it is unusual to see such a choice so sharply focused for our representatives in Washington.

Ben Bernanke and other regulators would like to see less pressure on big-bank earnings and capital. That’s understandable. Maybe it’s even a winning—though illogical—argument.

But let’s not talk nonsense about bogeyman danger to community banks.

Mr. DURBIN. Now, Kahr is no mouthpiece for merchants. He is a financial consultant who is recognized as the creator of many aspects of the modern card industry. But he says what I have been saying for months—that the arguments small banks have been making against my amendment defy economic logic and common sense.

I also believe interchange reform is essential for consumers. Banks will tell

you consumers will be hurt by reform because banks will have to raise consumer fees to make up for lost revenue.

First, when did we start listening to banks and credit card companies to tell us what is good for consumers? Second, read the headlines for the past few years and you will see that banks were already raising consumer fees to record highs in 2008, 2009, and 2010—before my amendment became law. They are always looking for ways to raise fees on consumers as high as the market will allow.

Third, consumers are already paying for the current interchange system. Soaring interchange fees are passed on to consumers in the form of higher prices for gasoline and groceries. And the current system particularly hurts unbanked consumers who pay with cash.

I believe consumers benefit from transparency, competition, and choice. The current interchange system has been designed specifically to avoid these features. That is why consumer groups agree with me and support the interchange reform which we have on the books.

I know the financial industry lobbyists are out there now storming the Halls of Congress. They are saying: Let’s delay the Fed’s interchange rulemaking for a year or two. Let’s study this issue some more. Study, study, study; this is one great study hall, this U.S. Senate. But there comes a point when we need to act, and we are prepared to act now with the Federal Reserve in April and in July.

There is no need to delay these rules. Read the comments I submitted to the Fed about their draft rulemaking. You will see how the new law provides reasonable timeframes for implementing every part of the Fed’s rules.

I saw this call for delay and study before, on the Credit CARD Act back in 2009, and it does not surprise me we are hearing it again.

If my colleagues remember nothing else, they should remember this: Delaying interchange reform will have significant consequences to employers, small businesses, and consumers all across America. Not only will businesses, universities, government agencies, and charities keep paying the current \$1.3 billion per month in debit interchange fees, the fees will keep going up further. There will be nothing to constrain Visa and MasterCard from setting higher and higher fees. There is no competition in this industry.

Some of my colleagues say they are concerned about small banks and consumers. So am I. That is why I drafted the amendment to exempt them. Independent analysts and consumer groups agree that the reform we passed protects small banks and consumers.

I say to my colleagues, do not tell me you are worried about small banks and consumers and then push for a delay that will serve to provide \$1 billion a month in more fees primarily to the largest banks in America.

A delay in this implementation would give Visa and MasterCard and the big banks a multibillion-dollar handout—have we heard this song before?—while leaving merchants and consumers worse off than they already are. I am not going to sit by and let the big banks and card companies get away with trying to kill this reform. They have been bailed out enough already.

I urge my colleagues in Congress: Do not bail out the big banks on Wall Street another time. Once in a political lifetime is enough for most of us.

I am standing with the consumers and merchants on this issue. I hope my colleagues will join me and find it is a good place to stand.

I yield the floor.

#### ADJOURNMENT UNTIL MONDAY, MARCH 14, 2011, AT 2 P.M.

The PRESIDING OFFICER. Under the previous order, the Senate stands adjourned until 2 p.m. on Monday, March 14, 2011.

Thereupon, the Senate, at 5:35 p.m., adjourned until Monday, March 14, 2011, at 2 p.m.

#### NOMINATIONS

Executive nominations received by the Senate:

##### NATIONAL SECURITY EDUCATION BOARD

CHRISTOPHER B. HOWARD, OF VIRGINIA, TO BE A MEMBER OF THE NATIONAL SECURITY EDUCATION BOARD FOR A TERM OF FOUR YEARS, VICE KIRON KANINA SKINNER, TERM EXPIRED.

##### INTERNATIONAL MONETARY FUND

BEN S. BERNANKE, OF NEW JERSEY, TO BE UNITED STATES ALTERNATE GOVERNOR OF THE INTERNATIONAL MONETARY FUND FOR A TERM OF FIVE YEARS. (REAPPOINTMENT)

##### INTERNATIONAL JOINT COMMISSION, UNITED STATES AND CANADA

DERETH BRITT GLANCE, OF NEW YORK, TO BE A COMMISSIONER ON THE PART OF THE UNITED STATES ON THE INTERNATIONAL JOINT COMMISSION, UNITED STATES AND CANADA, VICE IRENE B. BROOKS.

RICHARD M. MOY, OF MONTANA, TO BE A COMMISSIONER ON THE PART OF THE UNITED STATES ON THE INTERNATIONAL JOINT COMMISSION, UNITED STATES AND CANADA, VICE SAMUEL W. SPECK.

##### DEPARTMENT OF STATE

DANIEL BENJAMIN SHAPIRO, OF ILLINOIS, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO ISRAEL.

##### NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

SUBJECT TO QUALIFICATIONS PROVIDED BY LAW, THE FOLLOWING FOR PERMANENT APPOINTMENT TO THE GRADE INDICATED IN THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION.

*To be lieutenant (junior grade)*

ZACHARY P. CRESS

#### CONFIRMATIONS

Executive nominations confirmed by the Senate March 10, 2011:

##### THE JUDICIARY

MAX OLIVER COGBURN, JR., OF NORTH CAROLINA, TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF NORTH CAROLINA.

##### DEPARTMENT OF JUSTICE

TIMOTHY J. FEIGHERY, OF NEW YORK, TO BE CHAIRMAN OF THE FOREIGN CLAIMS SETTLEMENT COMMISSION OF THE UNITED STATES FOR A TERM EXPIRING SEPTEMBER 30, 2012.